

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
Plaintiff, ) Case No. 1:13-CR-00151  
) (RJA)(JJM)  
vs. )  
RYAN C. LANDER ) February 4th, 2015  
Defendant. )

TRANSCRIPT OF PLEA PROCEEDINGS  
BEFORE THE HONORABLE RICHARD J. ARCARA  
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: WILLIAM J. HOCHUL, JR.  
UNITED STATES ATTORNEY  
BY: CAROL M. BRIDGE, ESQ.  
ASSISTANT UNITED STATES ATTORNEY  
138 Delaware Avenue  
Buffalo, NY 14202

For the Defendant: LIPSITZ GREEN SCIME CAMBRIA, LLP  
BY: BARRY NELSON COVERT, ESQ.  
42 Delaware Avenue, Suite 120  
Buffalo, NY 14202

Court Reporter: MEGAN E. PELKA  
Robert H. Jackson Courthouse  
2 Niagara Square  
Buffalo, NY 14202

1                   THE CLERK: All rise. You may be seated. Criminal  
2 Action 2013-151A. United States vs. Ryan C. Lander. Plea.  
3 Counsel, please state your name and the party you represent  
4 for the record.

5                   MS. BRIDGE: Carol Bridge for the government.

6                   MR. COVERT: Barry Covert for Mr. Lander. Good  
7 morning, Your Honor.

8                   THE COURT: Good morning.

9                   MS. BRIDGE: Good morning, Your Honor. I am  
10 appearing on behalf of AUSA Kathleen Lynch. Your Honor, this  
11 morning, we're before the Court with a plea agreement for  
12 Mr. Lander and it has been signed and I believe we're prepared  
13 to go forward with this.

14                   THE COURT: Is that your understanding, Mr. Covert?

15                   MR. COVERT: Yes, Your Honor.

16                   THE COURT: Would you please administer the oath to  
17 Mr. Lander?

18 (The defendant was sworn at 11:00 a.m.)

19                   THE COURT: Sir, you are now under oath and being  
20 under oath during the course of these proceedings, I'll be  
21 asking you some questions. You'll have to answer those  
22 questions honestly and truthfully. If you were to give me any  
23 false answer, that false answer may be used against you in a  
24 further prosecution brought by the government on a charge of  
25 perjury or making a false statement while under oath. Do you

1 understand that, sir?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: It's also very important you understand  
4 what your rights are. If at any time during the course of  
5 these proceedings there's something you do not understand, you  
6 want to ask me a question, you want to consult with your  
7 attorney, you're free to do so. You're encouraged to do so.  
8 It's not important that we get this over with as quickly as  
9 possible. What's important is that I'm satisfied that you  
10 fully understand what your rights are. Do you understand  
11 that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Now, from my understanding, you're here  
14 to waive certain rights and to plead guilty to Count 1 of the  
15 indictment under the terms and conditions of the plea  
16 agreement. Do you understand this charge, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Covert, you have gone over the charge  
19 with your client. It's pretty straightforward. Are you  
20 satisfied he understands it?

21 MR. COVERT: Yes, Your Honor.

22 THE COURT: And you've gone over the terms and  
23 conditions of the plea agreement?

24 MR. COVERT: Many times, Your Honor.

25 THE COURT: And his rights under Rule 11?

1 MR. COVERT: Absolutely, Your Honor.

2 THE COURT: Now, sir, you have discussed this whole  
3 matter with your attorney. He's explained to you what your  
4 legal rights are, what your legal options are. You probably  
5 didn't like to hear what he had to tell you, but he's not  
6 there to make you feel good. He's there to be your legal  
7 advisor.

8 And apparently, based on those discussions, you're  
9 here today to waive certain rights and to plead guilty to  
10 Count 1 under the terms and conditions of the plea agreement.  
11 Are you fully satisfied with the advice and counsel you  
12 received from your lawyer?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Any complaints?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Let's proceed to the plea  
17 agreement.

18 MS. BRIDGE: The defendant, Ryan C. Lander and the  
19 United States Attorney for the Western District of New York,  
20 hereafter the government, hereby enter into a plea agreement  
21 with the terms and conditions set forth.

22 The defendant agrees to plead guilty to Count 1 of  
23 the indictment, which charges a violation of Title 18,  
24 United States Code, Section 2251(a), production of child  
25 pornography, for which the mandatory minimum term of

1 imprisonment is 15 years and for which the maximum possible  
2 sentence is a term of imprisonment of 30 years, a fine of  
3 \$250,000, a mandatory \$100 special assessment and a term of  
4 supervisory release of five years and up to life. The  
5 defendant understands that the penalties set forth in this  
6 paragraph are the maximum penalties that can be imposed by the  
7 Court at sentencing.

8 THE COURT: Do you understand that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Covert, did you explain to him the  
11 importance of this paragraph?

12 MR. COVERT: Absolutely, Your Honor.

13 THE COURT: What's the importance of the paragraph?

14 MS. BRIDGE: The importance of this paragraph, Your  
15 Honor, is that it advises the defendant of the maximum  
16 possible term of sentencing and in this case, also the minimum  
17 mandatory sentence that he faces pursuant to this plea and  
18 that would be notwithstanding the guidelines that are  
19 calculated in subsequent paragraphs in this plea agreement.

20 THE COURT: Do you understand that, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right.

23 MS. BRIDGE: The defendant understands that pursuant  
24 to Title 18, United States Code, Section 2259(a), the Court  
25 must order restitution for the full amount of the victims'

1 compensable losses up to \$100,000, as determined by the Court.  
2 The defendant understands that he will not be able to withdraw  
3 his plea of guilty based upon any restitution amount ordered  
4 by the Court.

5 THE COURT: Do you understand that, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 MS. BRIDGE: The defendant understands that if it is  
8 determined that he has violated any of the terms or conditions  
9 of supervised release, he may be required to serve in prison  
10 all or part of the term of supervised release, up to three  
11 years, without credit for time previously served on supervised  
12 release.

13 And if the defendant commits any criminal offense  
14 under Chapter 109(a), 110 or 117, or Sections 1201 or 1591 of  
15 Title 18 United States Code, for which imprisonment for a term  
16 longer than one year can be imposed, the defendant shall be  
17 sentenced to a term of imprisonment of not less than five  
18 years and up to life.

19 As a consequence, in the event the defendant is  
20 sentenced to the maximum term of incarceration, a prison term  
21 imposed for a violation of supervised release may result in  
22 the defendant's serving a sentence of imprisonment longer than  
23 the statutory maximum set forth in paragraph 1 of this  
24 agreement.

25 THE COURT: Do you understand that, sir?

1                   THE DEFENDANT: Yes, Your Honor.

2                   MS. BRIDGE: The defendant has been advised and  
3 understands that under the Sex Offender Registration and  
4 Notification Act he must register and keep registration  
5 current in all of the following jurisdictions; where the  
6 defendant resides, where he is employed and where the  
7 defendant is a student. The defendant understands the  
8 requirements for registration includes providing his name,  
9 residence address and the names and addresses of any places  
10 where the defendant is or will be an employee or student,  
11 among other information.

12                  The defendant further understands this requirement to  
13 keep the registration current includes informing at least one  
14 jurisdiction in which the defendant resides, is an employee or  
15 is a student not later than three business days after any  
16 change of the defendant's name, residence, employment or  
17 student status.

18                  The defendant has been advised and understands that  
19 failure to comply with these obligations subjects him to  
20 prosecution for failure to register under federal law pursuant  
21 to Title 18, United States Code, Section 2250, which is  
22 punishable by imprisonment, a fine or both.

23                  THE COURT: Do you understand that, sir?

24                  THE DEFENDANT: Yes, Your Honor.

25                  MS. BRIDGE: The defendant acknowledges that a

1 conviction in this action may result in the defendant's civil  
2 commitment pursuant to 18 United States Code, Section 4248, as  
3 a sexually dangerous person. The defendant understands that  
4 the determination as to whether the defendant will be subject  
5 to civil commitment will be made initially by the Attorney  
6 General or the Director of Bureau of Prisons at the conclusion  
7 of the defendant's term of imprisonment and that the Court  
8 will make a final determination in a separate proceeding.

9 THE COURT: Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: What's that all about?

12 MS. BRIDGE: Your Honor, if the -- as it sets forth,  
13 the Attorney General or the Director of Bureau of Prisons, in  
14 their own determination believe that the defendant, if  
15 released, would be deemed a sexually dangerous person, they  
16 could commit him civilly and -- but prior to that being done,  
17 there must be a hearing conducted. A recommendation would be  
18 made to the district court and there would be a hearing with  
19 respect to why they believe the defendant is a sexually  
20 dangerous person prior to his civil commitment.

21 THE COURT: All right. I have never seen that  
22 before. All right. Go ahead. Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay.

25 MS. BRIDGE: The elements and factual basis for the

1       plea, Your Honor. The defendant understands the nature of the  
2       offense set forth in paragraph 1 of this agreement and  
3       understands that if this case proceeded to trial the  
4       government would be required to prove beyond a reasonable  
5       doubt the following elements of the crime:

6               The defendant knowingly employed, used, persuaded,  
7       enticed or coerced a person less than 18 years old to engage  
8       in sexually-explicit conduct as defined in 18 United States  
9       Code, Section 2256, for the purpose of producing a visual  
10      depiction of the person less than 18 years old engaging in  
11      such conduct. The visual depiction was produced using  
12      materials that had been mailed, shipped or transported in and  
13      affecting interstate or foreign commerce by any means,  
14      including a computer.

15               The factual basis for the plea. The defendant and  
16       the government agree to the following facts, which form the  
17       basis of the entry of the plea of guilty including relevant  
18       conduct.

19               Count 1. Production of child pornography. Between  
20      in or about July of 2011 and March 7, 2013, the defendant,  
21      Ryan C. Lander, who lived and was located in Steuben County in  
22      the State of New York, employed, used, persuaded, coerced or  
23      enticed victim 1, a prepubescent minor, who had not yet  
24      attained the age of 12 and was under the age of 18, who lived  
25      and was located in the Western District of New York, to engage

1 in sexually-explicit conduct for the purposes of photographing  
2 and producing visual depictions of that minor engaged in that  
3 conduct.

4 The defendant saved such sexually-explicit images on  
5 his computer hard drive. The visual depictions were produced  
6 using materials including a computer that had been mailed,  
7 shipped and transported in and affecting interstate and  
8 foreign commerce.

9 Relevant conduct with respect to Victim 2 is:  
10 Between on or about May 2008 and on or about March 7th, 2013  
11 the defendant, Ryan C. Lander, knowingly produced child  
12 pornography. The defendant employed, used, persuaded, coerced  
13 or enticed Victim 2, a prepubescent minor, who had not yet  
14 attained the age of 12 and was under the age of 18, who lived  
15 and was located in the Western District of New York, to engage  
16 in sexually-explicit conduct for the purposes of photographing  
17 and producing visual depictions of that minor engaged in that  
18 conduct.

19 The defendant saved such sexually-explicit images on  
20 his computer hard drive and those visual depictions were  
21 produced using materials including a computer that had been  
22 mailed, shipped and transported in and affecting interstate  
23 and foreign commerce.

24 THE COURT: Do you understand all that, sir?

25 THE DEFENDANT: Yes, Your Honor.

1                   THE COURT: How would you prove this?

2                   MS. BRIDGE: Your Honor, special agents from Homeland  
3 Security Investigations, who conducted investigation involving  
4 a website www.imgsrc.ru that allowed photo sharing among  
5 users. The investigators uncovered activity by a particular  
6 user, using the username pantysnfr, who was posting pictures  
7 of prepubescent females, ages approximately four and one year  
8 old, as well as photos of children's underwear and diapers.  
9 Those children were later identified as the victims in this  
10 case.

11                 Evidence obtained by administrative subpoena by  
12 Microsoft and Time Warner Cable would show that the IP address  
13 was obtained and identified the defendant as the user of this  
14 address. The agents would testify that they visited the  
15 defendant to conduct an interview about illegal internet  
16 activity. He consented to allow them into his home and agreed  
17 to answer questions.

18                 During that interview, the defendant made a number of  
19 admissions that the government would seek to introduce at  
20 trial. He admitted that he lived alone and was the only  
21 person with access to computers and wifi. He admitted that he  
22 used the screen name, P-A-N-T-Y-S-N-F-R and I-M-G-F-R-C. He  
23 admitted he had taken photos of his nieces and posted them on  
24 I-M-G-R-S-R-C and he admitted that he was attracted to  
25 children and specifically the victims in this case.

1                   The agents will testify that the defendant consented  
2 to a search and signed a waiver permitting HSI to seize and  
3 conduct an examination of his computers and electronics and  
4 the agents found children's underwear in the defendant's room  
5 and the defendant admitted that he had masturbated using this  
6 underwear.

7                   The agents subsequently obtained a search warrant and  
8 retrieved other items, including multiple electronics, the  
9 defendant's clothing, which was depicted in the photos with  
10 the victims and the children's clothing.

11                  A subsequent search warrant was obtained and searched  
12 the computers and electronic media were obtained on consent  
13 and through the warrant. A forensic examination of the  
14 computer was obtained on consent and by warrant would show  
15 that they revealed evidence of child pornography, including  
16 images of victims produced by the defendant.

17                  The defendant also had anti-forensic software  
18 installed on his computer, as well as a file shredder program  
19 and file encryption software and witnesses would be called to  
20 testify to those facts, Your Honor.

21                  THE COURT: Do you understand all that, sir?

22                  THE DEFENDANT: Yes, sir.

23                  THE COURT: Okay.

24                  MS. BRIDGE: The sentencing guidelines. The  
25 defendant understands that the Court must consider, but is not

1 bound by the sentencing guidelines under the Sentencing Reform  
2 Act of 1984. Pursuant to the Sentencing Guideline  
3 Section 1B1.2(a), the government and the defendant agree that  
4 the defendant's sentencing range for imprisonment and a fine  
5 shall be determined as if the defendant was convicted of two  
6 counts in violation of Title 18, United States Code,  
7 Section 2251(a).

8 THE COURT: Do you understand that, sir?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay.

11 MS. BRIDGE: Count 1, the base offense level. The  
12 government and defendant agree that Guideline Section 2G2.1(a)  
13 applies to the offense of conviction in Count 1 and provides  
14 for a base offense level of 32.

15 THE COURT: Do you understand that, sir?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You saw this table?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: With all these numbers? Okay. This is  
20 important because you're going to end up somewhere on this  
21 table. And where you end up, that's a range of months that  
22 are being recommended to the Court as to what the sentence  
23 should be. I'm not bound by it, but I'm going to carefully  
24 consider it. You want to end up as far to the top of this  
25 table as you can and as far away from the bottom, because as

1 you go down that page, those numbers get pretty high. Now,  
2 this particular violation, under these facts and  
3 circumstances, under the guidelines, as I'm sure your lawyer  
4 spent a lot of time explaining this to you, the number is 32.  
5 Now, we're going to make some adjustments here. We're looking  
6 at any aggravating or mitigating factors to get a number that  
7 would fit your situation.

8                 If you have any questions about it as we go through  
9 this, you let me know; otherwise, I'll assume you understand  
10 this as a result of your discussions with your attorney. Do  
11 you understand that?

12                 THE DEFENDANT: Yes, sir.

13                 THE COURT: Mr. Covert, you went over all this with  
14 your client?

15                 MR. COVERT: Many times, Your Honor.

16                 THE COURT: All right.

17                 MS. BRIDGE: Under Count 1, the specific offense  
18 characteristics and chapter 2 adjustments are as follows: The  
19 government and the defendant agree that the following specific  
20 offense characteristics do apply to Count 1; the four-level  
21 increase pursuant to Guideline Section 2G2.1(b)(1)(A), that  
22 the offense involved a minor who had not yet attained the age  
23 of 12 years and a two-level increase pursuant to Guideline  
24 Section 2G2.1(b)(2)(A), the offense involved sexual contact.  
25 The adjusted offense level, based on the foregoing, is -- with

1 the understanding of the government and the defendant would  
2 be, as to Count 1, 38.

3 With respect to Victim 2, the base offense level, the  
4 government and the defendant agree that Guideline Sections  
5 2G2.1(a) and 2G2.1(d)(1) apply to the relevant conduct and  
6 provide for a base offense level of 32. The specific offense,  
7 characteristic chapter 2 adjustments, that the government and  
8 the defendant agree apply are the four-level increase pursuant  
9 to Guideline Section 2G2.1(b)(1)(A), that the offense involved  
10 a minor who had not yet attained the age of 12 years and the  
11 two-level increase pursuant to the Guideline Section  
12 2G2.1(b)(2)(A), the offense involved sexual contact.

13 The adjusted offense level. It is the understanding  
14 of the government and the defendant for the relevant conduct  
15 under Count 2 is 38. The combined adjusted offense level,  
16 based on paragraphs 8 through 13 of this agreement and  
17 Guideline Section 3D1.4, it is the understanding of the  
18 defendant and the government that the defendant's combined  
19 adjusted offense level is 40.

20 THE COURT: Do you understand this, sir?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay.

23 MS. BRIDGE: At sentencing, the government agrees not  
24 to oppose the recommendation that the Court apply the two-  
25 level downward adjustment of Guideline Section 3E1.1(a) for

1 acceptance of responsibility and further agrees to move the  
2 Court to apply the additional one-level downward adjustment of  
3 Guideline Section 3E1.1(b), which would result in a total  
4 offense level of 37.

5 THE COURT: Now, do you understand that, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: That provision says that if you're guilty  
8 of the offense and willing to accept responsibility, that you  
9 can get a reduction in three levels. That theory being that  
10 if you provide acceptance of responsibility, by pleading  
11 guilty, it's evidence you are. Obviously, if you're not  
12 guilty, you have no business being here. If you're guilty and  
13 you're willing to accept responsibility, you get a reduction  
14 of three levels.

15 And if you look at those numbers, 37 at the low end,  
16 40 at the high end, you can see there's quite a bit of  
17 difference there in the sentencing range. There's no  
18 guarantee you'll get the lower end, but it gives you and your  
19 lawyer a chance to argue for a lower sentence.

20 If you went to trial and if you were convicted, in  
21 all likelihood, this three-level reduction would not be  
22 available to you; the theory being you save the government the  
23 time and expense of a trial, you should get a lower sentence  
24 or recommend a lower sentence. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right.

2 MS. BRIDGE: Under the criminal history category, it  
3 is the understanding of the government and the defendant that  
4 the defendant's criminal history category is 1. The defendant  
5 understands if he is sentenced for or convicted of any other  
6 charges prior to sentencing in this action, his criminal  
7 history category may increase. The defendant understands that  
8 he has no right to withdraw the plea of guilty based on the  
9 Court's determination of the defendant's criminal history  
10 category.

11 The Guidelines Application Calculations and Impact.  
12 It's the understanding of the government and the defendant  
13 that with a total offense level of 37 and a criminal history  
14 category of 1 and taking into account the statutory maximum  
15 penalties, the defendant's sentencing range would be a term of  
16 imprisonment of 210 to 262 months, a fine of 20 to \$200,000,  
17 and a period of -- 20,000 to \$200,000 and a period of  
18 supervised release of at least five years and up to life.

19 Notwithstanding this, the defendant understands that  
20 at sentencing he is subject to the minimum and maximum  
21 penalties set forth in paragraph 1 of this agreement.

22 THE COURT: Do you understand that, sir?

23 THE DEFENDANT: Yes, Your Honor.

24 MS. BRIDGE: The government and the defendant agree  
25 to the correctness of the calculation of the sentencing

1 guideline range set forth above. The government and the  
2 defendant, however, reserve the right to recommend a sentence  
3 outside the sentencing guideline range. This paragraph  
4 reserves the right to the government and the defendant to  
5 bring to the attention of the Court all information deemed  
6 relevant to a determination of the proper sentence in this  
7 action.

8 THE COURT: All right.

9 MS. BRIDGE: The defendant understands that the Court  
10 is not bound to accept any sentencing guideline calculation  
11 set forth in this agreement and the defendant will not be  
12 entitled to withdraw the plea of guilty based on the sentence  
13 imposed by the Court.

14 THE COURT: Do you understand that, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Mr. Covert, any reason to read the Statue  
17 of Limitations?

18 MR. COVERT: No, Your Honor.

19 THE COURT: And the government rights and  
20 reservations?

21 MR. COVERT: No, Your Honor.

22 THE COURT: All right. Let's go to the appeal  
23 rights.

24 MS. BRIDGE: The appeal rights. The defendant  
25 understands that Title 18, United States Code, Section 3742

1 affords the defendant a limited right to appeal the sentence  
2 imposed. The defendant, however, knowingly waives the right  
3 to appeal and collaterally attack any component of the  
4 sentence imposed by the Court which falls within or is less  
5 than the sentencing range for imprisonment, fine and  
6 supervised release set forth in section 3, paragraph 19 above,  
7 notwithstanding the manner in which the Court determines the  
8 sentence.

9                   In the event of an appeal of the defendant's sentence  
10 by the government, the defendant reserves the right to argue  
11 the correctness of the defendant's sentence. The defendant  
12 understands that by agreeing to not collaterally attack the  
13 sentence, he is waiving the right to challenge the sentence in  
14 the event that in the future he becomes aware of previously  
15 unknown facts or a change in the law which the defendant  
16 believes would justify a decrease in his sentence.

17                   The government waives its right to appeal any  
18 component of a sentence imposed by the Court which falls  
19 within the sentencing range for imprisonment, fine and  
20 supervised release set forth in section 3, paragraph 19 above,  
21 notwithstanding the manner in which the Court determines his  
22 sentence. However, in the event of an appeal from the  
23 defendant's sentence by the defendant, the government reserves  
24 its right to argue the correctness of the defendant's  
25 sentence.

1                   THE COURT: Do you understand that, sir?

2                   THE DEFENDANT: Yes, Your Honor.

3                   THE COURT: Okay.

4                   MS. BRIDGE: The next section discusses forfeiture  
5 provisions --

6                   THE COURT: Just summarize that, please.

7                   MS. BRIDGE: -- of computer-related forfeiture. This  
8 section lists items seized from the defendant during -- by  
9 consent and via search warrant that was lawfully obtained,  
10 Your Honor and this section says that the defendant is  
11 agreeing to criminally forfeit all these items and will not  
12 challenge their forfeiture to the government.

13                  THE COURT: Do you understand that, sir?

14                  THE DEFENDANT: Yes, Your Honor.

15                  MS. BRIDGE: Finally, this plea agreement represents  
16 the total agreement between the defendant, Ryan C. Lander and  
17 the government. There are no promises made by anyone other  
18 than those contained in this agreement. This agreement  
19 supercedes any other prior agreements, written or oral,  
20 entered into between the government and the defendant. It is  
21 signed by Assistant United States Attorney Kathleen Lynch and  
22 dated today.

23                  What follows is a statement saying I, meaning the  
24 defendant, have read this agreement, which consists of  
25 15 pages. I have had a full opportunity to discuss this

1 agreement with my attorney, Barry M. Covert, Esq. I agree  
2 that it represents the total agreement between myself and the  
3 government. No promises or representations have been made to  
4 me other than what is contained in this agreement. I  
5 understand all the consequences of my plea of guilty and I  
6 fully understand what -- the contents of this agreement. I am  
7 signing this agreement voluntarily and of my own free will.  
8 It is signed by the defendant and his counsel, Mr. Barry  
9 Covert and dated today, Your Honor.

10 THE COURT: Now, sir, we have gone over the agreement  
11 in court. You indicated that you understand it. Your  
12 attorney says he's gone over it with you; he's satisfied you  
13 understand it and you signed it, indicating you understand it.  
14 Any questions?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are these all the terms and conditions of  
17 the plea agreement which we just read here in court?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: No one has made any other promises to  
20 you, have they?

21 THE DEFENDANT: No, sir.

22 THE COURT: How old are you, sir?

23 THE DEFENDANT: Thirty-seven.

24 THE COURT: Thirty-seven?

25 THE DEFENDANT: Thirty-seven. Yes, sir.

1                   THE COURT: Where were you born and raised?

2                   THE DEFENDANT: I was born in Rochester, raised in  
3 and around Dansville and Wayland, New York.

4                   THE COURT: All right. And what's the extent of your  
5 education?

6                   THE DEFENDANT: A two-year college degree.

7                   THE COURT: Where did you go to college?

8                   THE DEFENDANT: Alfred State.

9                   THE COURT: And what were your degrees in?

10                  THE DEFENDANT: Computer and electronic systems  
11 technician.

12                  THE COURT: All right. And are you married?

13                  THE DEFENDANT: We're separated.

14                  THE COURT: Do you have any children?

15                  THE DEFENDANT: No, sir.

16                  THE COURT: What kind of work have you done over the  
17 years?

18                  THE DEFENDANT: I've been an industrial electrician  
19 for 14 years.

20                  THE COURT: Okay. What kind of hobbies do you have?  
21 What do you like to do?

22                  THE DEFENDANT: I like to collect tube radios,  
23 antiques, things of that nature.

24                  THE COURT: Okay. Are you seeing a doctor for any  
25 reason right now?

1                   THE DEFENDANT: No, sir.

2                   THE COURT: Psychiatrist?

3                   THE DEFENDANT: No, sir.

4                   THE COURT: Have you ever been hospitalized or  
5 treated for narcotic addiction?

6                   THE DEFENDANT: No, sir.

7                   THE COURT: Are you today under the influence of any  
8 drug, medicine or alcohol?

9                   THE DEFENDANT: No, sir.

10                  THE COURT: Mr. Covert, your client obviously is very  
11 intelligent; appears to be alert, focused, attentive; clearly  
12 understands everything I'm saying and everything that's going  
13 on here. He does not appear to be under the influence of any  
14 drug, medicine or alcohol. Is that consistent with your  
15 observations?

16                  MR. COVERT: It is, Your Honor.

17                  THE COURT: Okay. Has anyone forced you to plead  
18 guilty?

19                  THE DEFENDANT: No, sir.

20                  THE COURT: Has anyone threatened you in any way?

21                  THE DEFENDANT: No, sir.

22                  THE COURT: Your willingness to plead guilty, you  
23 discussed it with your attorney, he discussed it with the  
24 government's attorney and based on those discussions, this  
25 plea agreement was prepared and that's how this all came

1 about, true?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, do you understand the offense which  
4 you are pleading guilty to obviously is a serious offense and  
5 if accepted by the Court, you'll be found guilty. There will  
6 be no appeal as long as the sentence is consistent with the  
7 terms and conditions of the plea agreement. Do you understand  
8 that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And being found guilty of this offense  
11 may deprive you of certain rights. You may lose the right to  
12 vote, right to hold public office, right to serve on a jury,  
13 right to possess a firearm, certain civil service type jobs.  
14 You may lose those rights. Do you understand that, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you understand all the possible  
17 consequences? We've talked about paragraph 1 of the plea  
18 agreement. We've talked about the guidelines. We talked  
19 about the restitution -- possible restitution, the possible  
20 fine, the cost, the mandatory special assessment of \$100. Do  
21 you understand all that, sir?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Now, do you understand that you have a  
24 right to plead not guilty to this offense, which you have done  
25 up to the present time and you have a right to persist in that

1       plea of not guilty. You have a right to a trial; a fair trial  
2       in this courtroom where a jury of 12 people will decide  
3       whether you're guilty or not guilty. First of all, I'd be the  
4       judge, and to the best of my ability I would conduct a trial  
5       fairly and impartially. I have no interest in this case,  
6       other than to make sure that you and the government get a fair  
7       trial.

8               In selecting that jury, we would have in this  
9       courtroom somewhere around 50 to 75 people, individuals who  
10       are in the jury pool, people who live in this district.  
11       They'd be in the courtroom, you'd be in the courtroom. Your  
12       attorney would be with you. They'd all be put under oath to  
13       answer all my questions honestly and truthfully.

14               If anyone in that group that -- if there were anyone  
15       in that group who would not be fair and impartial, that person  
16       would be removed. And you'd have input into that through your  
17       lawyer and say, hey, Judge, this guy's already made up his  
18       mind. And if I agree with you -- and there's no reason why I  
19       wouldn't if it seems to make sense -- that person would be  
20       gone.

21               Also, you could remove up to ten people for any  
22       reason you want, other than race or gender. You can't say I  
23       don't want any women on my jury, or I don't want any particular  
24       race of people on my jury. You can't discriminate in that  
25       sense. Do you understand that?

1                   THE DEFENDANT: Yes, sir.

2                   THE COURT: Mr. Covert would represent you. You have  
3 a right to hear and to see all the witnesses and have him  
4 cross examine them and after the government has rested its  
5 case, you could put on a defense. You could subpoena  
6 witnesses or any records that are relevant.

7                   But you don't have to do anything. You have no  
8 obligation to do a thing. You're presumed not guilty. In  
9 other words, you can just sit right there. The burden is on  
10 the government to convince all 12 jurors that you're guilty  
11 beyond a reasonable doubt. Do you understand that, sir?

12                  THE DEFENDANT: Yes, Your Honor.

13                  THE COURT: And by entering a plea of guilty, if  
14 accepted by the Court, there will be no trial. You will have  
15 waived your right to trial as well as all of the other rights  
16 we've talked about. Do you understand that, sir?

17                  THE DEFENDANT: Yes, sir.

18                  THE COURT: Any questions?

19                  THE DEFENDANT: No, sir.

20                  THE COURT: You're doing this voluntarily, of your  
21 own free will, no one's forcing you to do this?

22                  THE DEFENDANT: Yes, sir.

23                  THE COURT: You understand all the possible  
24 consequences?

25                  THE DEFENDANT: Yes, sir.

1                   THE COURT: Counsel, is there any reason why I  
2 shouldn't accept the plea?

3                   MS. BRIDGE: No, Your Honor.

4                   MR. COVERT: No, Your Honor.

5                   THE COURT: You're both satisfied I complied with all  
6 the requirements of Rule 11?

7                   MS. BRIDGE: Yes, Your Honor.

8                   MR. COVERT: Yes, Your Honor.

9                   THE COURT: How do you plead to Count 1, sir; guilty  
10 or not guilty?

11                  THE DEFENDANT: Guilty, Your Honor.

12                  THE COURT: It is the finding of the Court the  
13 defendant is fully competent and capable of entering an  
14 informed plea. His plea of guilty is a knowing and voluntary  
15 plea supported by an independent basis of fact containing each  
16 essential element of the offense charged. This plea is  
17 therefore accepted. He is judged guilty of Count 1.

18                  Sentencing will be scheduled for May 14th at 12:30.

19                  A written presentence report will be prepared by the probation  
20 office to assist the Court in imposing sentence. You'll be  
21 afforded an opportunity to meet with the probation officer to  
22 provide information in that report. Your attorney should be  
23 present. You'll receive a copy of the report, as well as your  
24 attorney.

25                  You'll be able to file any additional information or

1 any motions or any objections or any memorandum that are  
2 consistent with the terms and conditions of the plea agreement  
3 and both you and your attorney will have an opportunity to  
4 address the Court at the time of sentencing and say anything  
5 you wish to say in mitigation of the sentence. The schedule  
6 for filing all papers will be as follows.

7 THE CLERK: The initial presentence report will be  
8 due March 30th. The statement of the parties with respect to  
9 sentencing factors and objections, if any and motions, if any,  
10 will be due April 23rd. Responses to any objections or  
11 responses to any motions will be due April 30th. A sentencing  
12 memorandum and/or character letters in support of the  
13 defendant will be due April 30th.

14 Any motion to adjourn the sentencing date will be due  
15 by May 4th. The final presentence report will be due May 7th  
16 and the government's response to any legal argument in  
17 defendant's sentencing memorandum will be due May 7th.

18 THE COURT: All right. Anything further?

19 MS. BRIDGE: No, Your Honor.

20 MR. COVERT: No, Your Honor. Thank you, Your Honor.

21 THE COURT: Thank you. Court will be in recess.

22 THE CLERK: All rise.

23 (Proceeding ended.)

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3 I certify that the foregoing is a  
4 correct transcription of the proceedings  
5 recorded by me in this matter.

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8

9 s/ Megan E. Pelka

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Court Reporter

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